

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BERALDO FONSECA,

Petitioner,

v.

JAMES SHERMAN, Warden,

Respondent.

Civil Action No. 05-351 Erie

**MEMORANDUM ORDER**

This habeas corpus action was received by the Clerk of Court on November 23, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 8], filed on December 8, 2005, recommended that Petitioner's Petition [Doc. No. 1] be dismissed for lack of subject matter jurisdiction. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendant. Petitioner filed objections on December 30, 2005 [Doc. No. 11]. After de novo review of the petition and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 4<sup>th</sup> day of January, 2006;

IT IS HEREBY ORDERED that the Petitioner's Petition for Writ of Habeas Corpus [Doc. No. 1] is DISMISSED for lack of subject matter jurisdiction.

The Report and Recommendation [Doc. No. 8] of Magistrate Judge Baxter, filed on December 8, 2005, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge